

APPENDIX C

FINAL REGULATORY FLEXIBILITY ANALYSIS

(*Second Report and Order* in WT Docket No. 00-48)

As required by the Regulatory Flexibility Act of 1980, as amended (RFA),³⁸⁸ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice of Proposed Rule Making (FNPRM)* in this proceeding.³⁸⁹ The Commission sought written public comment on the proposals in the *FNPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³⁹⁰

A. Need for, and Objectives of, the Second Report and Order

The rules adopted in the *Second Report and Order* are intended to further streamline, consolidate and clarify the Commission's Part 80 rules; remove unnecessary or duplicative requirements; address new international maritime requirements; and promote flexibility and efficiency in the use of marine radio equipment in a manner that will further maritime safety. Specifically, in the *Second Report and Order* the Commission (a) declines to create a voluntary restricted Global Maritime Distress and Safety System (GMDSS) license for recreational boaters;³⁹¹ (b) clarifies the responsibilities of VHF public coast stations that receive calls on the DSC distress frequency, Channel 70;³⁹² (c) clarifies that VHF public coast stations that are not exempt from the VHF Channel 16 watch requirement must have a radio operator on duty;³⁹³ (d) prohibits ship operation of any device capable of transmitting on a distress frequency without regulatory authorization;³⁹⁴ (e) redesignates Channels 75 and 76 for communications related to port operations, and establishes requirements for equipment to operate on the channels with reduced carrier power;³⁹⁵ (f) authorizes domestic use of INMARSAT-E emergency position indicating radiobeacons (EPIRBs) and establishes standards for such devices;³⁹⁶ (g) requires that small passenger vessels have digital selective calling capability one year after the U.S. Coast Guard (Coast Guard or USCG) declares Sea Areas A1 and A2 to be operational, and establishes additional equipment requirements for such vessels;³⁹⁷ (h) declines to specify that the qualified GMDSS operator required to be on vessels under our rules must be assigned exclusively to radio communications duties during an emergency;³⁹⁸ (i) updates the requirements for ship radio installations to incorporate new international regulations;³⁹⁹ (j) incorporates into the rules the international requirement that all passenger ships have the ability to

³⁸⁸ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

³⁸⁹ Amendment of Parts 13 and 80 of the Commission's rules Concerning Maritime Communications, *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 00-48, 17 FCC Rcd 6741, 6849 (2002).

³⁹⁰ See 5 U.S.C. § 604.

³⁹¹ See paras. 12-13, *supra*.

³⁹² See paras. 15-16, *supra*.

³⁹³ See paras. 18-20, *supra*.

³⁹⁴ See para. 22, *supra*.

³⁹⁵ See para. 25, *supra*.

³⁹⁶ See paras. 30-31, *supra*.

³⁹⁷ See paras. 33-34, 36, 38-40, *supra*.

³⁹⁸ See para. 42, *supra*.

³⁹⁹ See para. 44, *supra*.

communicate with search and rescue personnel on two specified aeronautical frequencies;⁴⁰⁰ (k) determines to continue listing the carrier frequency, rather than the assigned frequency, in Part 80 Tables of Frequencies;⁴⁰¹ and (l) specifies the number of questions to be included in the GMDSS radio operator license examinations.⁴⁰²

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

No comments were submitted specifically in response to the IRFA. We note, however, that the Passenger Vessel Association (PVA) indicated that it was opposed to several of the proposed rules because of the compliance costs that would be incurred by small passenger vessel operators, many of which are small businesses. Specifically, PVA argued that the costs of compliance outweighed the safety benefits of the proposed rules requiring that the VHF and MF radios carried by small passenger vessels be upgraded to have digital selective calling (DSC) capability;⁴⁰³ that on passenger ships, at least one qualified person must be assigned to perform only radio communications duties during distress situations;⁴⁰⁴ and that passenger vessels be equipped with means for two-way on-scene radiocommunications for search and rescue purposes using the aeronautical frequencies 121.5 and 123.1 MHz.⁴⁰⁵ We have considered the potential economic impact on small entities of these rules and the other rules discussed in the IRFA, and we have considered alternatives that would reduce the potential economic impact on small entities of the rules enacted herein, regardless of whether the potential economic impact was discussed in any comments.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴⁰⁶ The RFA defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁴⁰⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁴⁰⁸ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁴⁰⁹

Small businesses in the aviation and marine radio services use a marine very high frequency (VHF), medium frequency (MF), or high frequency (HF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, an aircraft radio, and/or any type of emergency locator transmitter

⁴⁰⁰ See para. 46, *supra*.

⁴⁰¹ See para. 49, *supra*.

⁴⁰² See para. 51, *supra*.

⁴⁰³ See para. 34, *supra*.

⁴⁰⁴ See para. 42, *supra*. We determined not to adopt this rule. *Id.*

⁴⁰⁵ See para. 46, *supra*.

⁴⁰⁶ 5 U.S.C. § 603(b)(3).

⁴⁰⁷ *Id.* § 601(6).

⁴⁰⁸ *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” *Id.* § 601(3).

⁴⁰⁹ Small Business Act, 15 U.S.C. § 632 (1996).

(ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. For purposes of this FRFA, therefore, the applicable definition of small entity is the definition under the SBA rules applicable to wireless telecommunications. Pursuant to this definition, a "small entity" for purposes of the ship station licensees, public coast station licensees, or other marine radio users that may be affected by these rules, is any entity employing 1,500 or fewer persons. 13 C.F.R. § 121.201 (NAICS Code 517212). Since the size data provided by the Small Business Administration do not enable us to make a meaningful estimate of the number of marine radio service providers and users that are small businesses, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that twelve radiotelephone firms out of a total of 1,178 such firms which operated in 1992 had at least 1,000 employees. Thus, we estimate that as many as 1,166 small entities may be affected.

Some of the rules adopted herein affect VHF public coast station licensees. The Commission has defined the term "small entity" specifically applicable to public coast station licensees as any entity employing less than 1,500 persons, based on the definition under the Small Business Administration rules applicable to radiotelephone service providers. See Amendment of the Commission's rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853, 19893 (1998) (citing 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812, now NAICS Code 513322). Since the size data provided by the Small Business Administration do not enable us to make a meaningful estimate of the number of public coast station licensees that are small businesses, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that twelve radiotelephone firms out of a total of 1,178 such firms which operated in 1992 had 1,000 or more employees. Thus, we estimate that no fewer than 1,166 small entities will be affected.

Some of the rules adopted herein may also affect small businesses that manufacture marine radio equipment. The Commission has not developed a definition of small entities applicable to marine radio equipment manufacturers. Therefore, the applicable definition is that for Wireless Communications Equipment Manufacturers. The SBA has established a small business size standard for radio and television broadcasting and wireless communications equipment manufacturing. Under this standard, firms are considered small if they have 750 or fewer employees.⁴¹⁰ Census Bureau data for 1997 indicate that, for that year, there were a total of 1,215 establishments⁴¹¹ in this category.⁴¹² Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of wireless equipment manufacturers in this category is approximately 61.35%,⁴¹³ so the Commission estimates that the number of wireless equipment manufacturers with employment under 500 was actually closer to 706, with an additional 23 establishments having employment of between 500 and 999. Given the above, the Commission estimates that the great majority of wireless communications equipment manufacturers are small businesses.

⁴¹⁰ 13 CFR § 121.201, NAICS code 334220.

⁴¹¹ The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 1997, which was 1,089.

⁴¹² U.S. Census Bureau, 1997 Economic Census, Industry Series: Manufacturing, "Industry Statistics by Employment Size," Table 4, NAICS code 334220 (issued August 1999).

⁴¹³ *Id.* Table 5, "Industry Statistics by Industry and Primary Product Class Specialization: 1997."

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

In the *Second Report and Order*, we adopt several rule amendments that may affect reporting, recordkeeping and other compliance requirements for small entities.⁴¹⁴ First, we amend section 80.203 of the rules⁴¹⁵ to bar ship stations from including any device capable of transmitting on a distress frequency without regulatory authorization.⁴¹⁶ This prohibition could affect small entities that manufacture ship radio equipment. Second, we amend section 80.215(g)(3)⁴¹⁷ to require that ship station transmitters have Channels 75 and 76, and automatically reduce the carrier power to one watt or less when tuned those channels, with no manual override capability.⁴¹⁸ This new requirement could affect small entities that manufacture or use such transmitters. Third, we adopt a number of new requirements for small passenger vessels: a requirement that the VHF and MF radios already mandated by section 80.905(a) of the rules⁴¹⁹ be DSC-equipped;⁴²⁰ a requirement that the single sideband (SSB) radios required to be carried by ships operating over one hundred nautical miles from shore be DSC-equipped;⁴²¹ a requirement that the INMARSAT ship earth stations that may be carried by ships operating more than one hundred nautical miles from shore in lieu of an SSB radio be limited to specified classes of earth stations;⁴²² a requirement that vessels required to carry a SSB radio with a reserve power supply also carry a reserve power supply for the navigation receiver;⁴²³ and a requirement for updating position information.⁴²⁴ These requirements may have a direct economic impact on operators of small passenger vessels. Finally, we amend Section 80.1085 of the rules⁴²⁵ to require that every passenger ship be provided with means for two-way on-scene radiocommunications for search and rescue purposes using the aeronautical frequencies 121.5 and 123.1 MHz from the position from which the ship is normally navigated.⁴²⁶

In the IRFA accompanying the *FNPRM* in this proceeding, we specifically identified each of the above rule amendments as potentially affecting reporting, recordkeeping and other compliance

⁴¹⁴ We discuss here those rule amendments that impose new or additional requirements. We note that many of the decisions adopted in the *Second Report and Order* remove or relax existing requirements, or decline to adopt new requirements. See, e.g., paras. 12-13 (declining to establish a new licensing requirement for recreational boaters who use DSC equipment); paras. 15-16 (clarifying, *inter alia*, that VHF public coast stations do not have to maintain a Channel 70 watch); paras. 18-20 (clarifying that VHF public coast stations may engage in unattended operation on non-DSC equipment if they are exempt from the Channel 16 watch requirement); para. 30 (authorizing the use of INMARSAT-EPIRBs), para. 42 (declining to adopt a new requirement that passenger ships must have at least one qualified person assigned to perform only radio communications duties during distress situations), *supra*.

⁴¹⁵ 47 C.F.R. § 80.203.

⁴¹⁶ See para. 22, *supra*.

⁴¹⁷ 47 C.F.R. § 87.215(g)(3).

⁴¹⁸ See para. 25, *supra*.

⁴¹⁹ 47 C.F.R. § 80.905(a).

⁴²⁰ See paras. 33-34, *supra*.

⁴²¹ See para. 36, *supra*.

⁴²² See para. 38, *supra*.

⁴²³ See para. 39, *supra*.

⁴²⁴ See para. 40, *supra*.

⁴²⁵ 47 C.F.R. § 80.1085.

⁴²⁶ See para. 46, *supra*.

requirements, and specifically requested comment on the economic impact of these changes.⁴²⁷

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”⁴²⁸

With respect to all of the rules adopted in the *Second Report and Order* that may affect reporting, recordkeeping and other compliance requirements for small entities, as identified in Section D of this FRFA, *supra*, we have considered how we might minimize the economic impact on small entities, and we have considered alternative measures that might minimize that impact. As a general matter, the alternatives considered, and in many cases adopted, include exempting small entities from the requirement; providing “grandfathering” protection from the requirement; providing a transition period to give either small entities or all affected entities additional time to come into compliance; and imposing a less burdensome requirement, either for small entities or for all affected entities. In addition, to the extent we establish here new standards for authorization of marine radio equipment, we have generally required compliance with performance standards, rather than prescribing a particular equipment design. In the IRFA accompanying the *FNPRM* in this proceeding, we specifically requested comment addressing particular alternatives that may be appropriate for particular rules proposed or discussed in the *FNPRM*.⁴²⁹ Although we received no comments specifically addressed to the IRFA, we have considered all comments to the *FNPRM* addressing the impact of any proposed change on small entities and all suggestions for alternative measures that would have a less significant impact on small entities. Moreover, even where we received no comments of this nature with regard to a particular new requirement, we considered the potential impact of the requirement on small entities, and considered alternatives. We discuss each of the specific new requirements adopted in the *Second Report and Order*, and relevant alternatives, below.

In the *Second Report and Order*, we amend section 80.203 of the rules⁴³⁰ to bar ship stations from including any device capable of transmitting on a distress frequency without regulatory authorization.⁴³¹ This rule change had been proposed by the Coast Guard, and the *FNPRM* specifically asked for comment on whether this rule change would hamper the ability of manufacturers to add tone signaling capability or to otherwise improve their equipment.⁴³² However, no manufacturer commented on this rule change, no commenter opposed it, and there is nothing in the record to indicate that it will adversely effect manufacturers. In any event, given that this rule change does not require manufacturers to add any features or capabilities to equipment, but merely prohibits what was never affirmatively authorized in the first place, there is no reason to phase in this requirement gradually. Further, there is no basis in the record to exempt manufacturers that are small entities from this requirement. Any such exemption, moreover, would jeopardize maritime safety since any unauthorized emissions on a distress frequency, from whatever source,

⁴²⁷ See *GMDSS FNPRM*, 17 FCC Rcd at 6851-52.

⁴²⁸ 5 U.S.C. § 603(c)(1)-(4).

⁴²⁹ See *GMDSS FNPRM*, 17 FCC Rcd at 6853.

⁴³⁰ 47 C.F.R. § 80.203.

⁴³¹ See para. 22, *supra*.

⁴³² See *GMDSS FNPRM*, 17 FCC Rcd at 6783, ¶ 115.

could compromise the ability of the Coast Guard to process and respond to distress signals.⁴³³

In the *Second Report and Order*, we amend section 80.215(g)(3)⁴³⁴ to require that ship station transmitters have Channels 75 and 76, and automatically reduce the carrier power to one watt or less when tuned those channels, with no manual override capability.⁴³⁵ In the *FNPRM*, the Commission expressed concern about the impact of this rule on manufacturers, and specifically solicited comment on appropriate grandfathering protection if the new requirements are adopted.⁴³⁶ No manufacturer commented on the proposed equipment requirements relating to Channels 75 and 76, and no one opposed such requirements. The only commenter responding to the Commission's request for input on appropriate grandfathering protection was the Coast Guard, which stated simply that it supports grandfathering protection of some sort.⁴³⁷ Notwithstanding the absence of comment on this issue from manufacturers or vessel operators, we have provided both grandfathering protection for existing installed equipment and a transitional period before new installations have to comply with the new requirements. Specifically, non-compliant equipment installed prior to the effective date of these rules is grandfathered indefinitely, so that it may continue to be used for its remaining useful life.⁴³⁸ In addition, we are allowing installations of non-compliant equipment until one year after the effective date of the *Second Report and Order*.⁴³⁹ We believe these actions will effectively minimize the compliance burden of this requirement on manufacturers and ship station licensees, especially any affected small entities. Given that no manufacturers commented on these rules, we do not believe this approach will leave manufacturers with stranded inventory. We decline to exempt small entities from these requirements because the benefits of designating Channels 75 and 76 for port operations, and the associated equipment requirements, cannot be fully realized unless access to Channels 75 and 76 is ubiquitous, and because there is nothing in the record of this proceeding to suggest a need for such an exemption, especially given the grandfathering and transition provisions we have adopted.

In the *Second Report and Order*, we adopt a requirement that the VHF and MF radios already mandated by section 80.905(a) of the rules⁴⁴⁰ be DSC-equipped.⁴⁴¹ The Passenger Vessel Association (PVA) filed comments opposing this requirement. PVA contends that small passenger vessels that are not subject to GMDSS requirements under SOLAS should not be required to meet GMDSS-derived equipment requirements such as this.⁴⁴² PVA further asserts that many of the vessel operators that will be affected by this requirement are small businesses,⁴⁴³ and suggested that, instead of eliminating or tightening the exemption, the Commission should broaden the exemption to cover all passenger-carrying vessels, irrespective of size, that operate in protected waterways, such as harbors, bays and waterways covered by

⁴³³ See para. 22, *supra*. We note that this rule change only pertains to the standards that equipment must meet in order to be authorized by the Commission. It does not prohibit the use of any existing equipment already installed on vessels, and thus should not impact ship station licensees. See § 80.203(m)(6) in Appendix B, *supra*.

⁴³⁴ 47 C.F.R. § 87.215(g)(3).

⁴³⁵ See para. 25, *supra*.

⁴³⁶ See *GMDSS FNPRM*, 17 FCC Rcd at 6784, ¶ 118.

⁴³⁷ See note 94, *supra* (citing USCG Comments (WT 00-48) at 4-5).

⁴³⁸ See para. 25, *supra*.

⁴³⁹ *Id.*

⁴⁴⁰ 47 C.F.R. § 80.905(a).

⁴⁴¹ See paras. 33-34, *supra*.

⁴⁴² See para. 34, *supra* (citing PVA Comments at 1).

⁴⁴³ See note 137, *supra* (citing PVA Comments at 1). PVA does not provide any statistics or other evidence in support of this claim.

Vessel Traffic Systems.⁴⁴⁴ We decline to exempt any class of vessels otherwise subject to section 80.905(a) from the new DSC requirement, even with respect to vessels owned and operated by small businesses and/or restricted to voyages in particular inland or coastal waterways. We agree with the Coast Guard and the GMDSS Task Force that the public safety benefits of imposing this requirement on small passenger vessels are paramount. DSC represents an important enhancement of maritime safety, and requiring DSC capability in small passenger vessels, even those limited to voyages on protected waterways, will provide safety benefits not only to the passengers and crew on such vessels, but to all GMDSS participating vessels. We also believe, moreover, that the compliance costs of this requirement will not be significant because, pursuant to section 80.203(n) of the Commission's rules,⁴⁴⁵ the Commission already requires that all VHF and MF marine radio transmitters submitted for equipment authorization have DSC capability. In fact, the DSC requirement has applied to all VHF and MF marine radio transmitters submitted for equipment authorization since June 17, 1999.⁴⁴⁶ As a consequence of this requirement, more and more of the new equipment available in the market will be DSC-capable. In addition, as a means to minimize whatever compliance costs are incurred by small passenger vessel operators, we have decided to defer the compliance deadline for this requirement. We will not require that VHF radios be upgraded to DSC until one year after the Coast Guard declares Sea Area A1 to be operational, and we will not require that MF radios be upgraded to DSC until one year after the Coast Guard declares Sea Area A2 to be operational.⁴⁴⁷ This compliance deadline is sufficiently far off that it will give affected small passenger vessel operators ample time to plan and budget for the required upgrades. In addition, as the deadline for compliance extends further into the future, it is likely that there will be fewer non-DSC transmitters in manufacturers' and retailers' inventory (because of the DSC requirement in section 80.203(n)), and we therefore expect that most new VHF and MF radio equipment available in the market during the time period immediately preceding the compliance deadline will have DSC capability, further minimizing the economic impact on small entities.

In the *Second Report and Order*, we adopt a requirement that the SSB radios required of ships operating over one hundred nautical miles from shore, pursuant to section 80.905,⁴⁴⁸ be DSC-equipped.⁴⁴⁹ The Coast Guard was the only party directly commenting on this issue, and it stated that, as in the case of VHF and MF radio equipment, requiring DSC capabilities in SSB radios will provide significant safety advantages over non-DSC equipment.⁴⁵⁰ No party opposed this requirement or attempted to quantify the compliance costs. On this record, then, we believe considerations of maritime safety should be given paramount weight. Indeed, given that the subject vessels by definition operate more than one hundred nautical miles from shore, the safety benefits of this requirement are even greater than those we have adopted for VHF and MF radios in vessels that do not operate so far from shore. Significantly, DSC capability will enhance the ability of passenger vessels on such voyages to contact nearby ships as well as shore facilities. Although we decline to exempt small passenger vessel operators that qualify as small entities from this DSC requirement, we have determined to give affected parties until one year after the effective date of the *Second Report and Order* before requiring compliance. We believe this reasonably fulfills the objective of minimizing compliance costs for small entities without compromising the objective of promoting public safety on the high seas. We do not hinge the compliance deadline in this case on the timing of the Coast Guard's declaration of Sea Area A1 or Sea Area A2 because vessels

⁴⁴⁴ *Id.*

⁴⁴⁵ 47 C.F.R. § 80.203(n).

⁴⁴⁶ *Id.*

⁴⁴⁷ See para. 34, *supra*. Some safety benefits of VHF-DSC radio and MF-DSC radio equipment can be realized immediately, but the full safety benefits of VHF-DSC and MF-DSC will not accrue until deployment of the shore-based facilities for Sea Area A1 coverage and Sea Area A2 coverage, respectively.

⁴⁴⁸ See 47 C.F.R. § 80.905(a)(3)(iii)(A), 4(iii)(A).

⁴⁴⁹ See para. 36, *supra*.

⁴⁵⁰ *Id.* (citing USCG Comments (WT 00-48) at 7).

operating more than one hundred nautical miles from shore are operating in Sea Area A3.

In the *Second Report and Order*, we adopt a requirement that the INMARSAT ship earth stations that may be carried by ships operating more than one hundred nautical miles from shore in lieu of an SSB radio, pursuant to section 80.905,⁴⁵¹ be limited to specified classes of earth stations.⁴⁵² We do not believe this requirement should have a significant impact on any small entities. No commenter opposed this proposal. In addition, we note that the rule merely *permits* the use of an INMARSAT earth station as an alternative to other equipment, rather than mandating the use of an INMARSAT earth station in all instances. Nonetheless, we have decided to relax the requirement, as it was proposed in the *FNPRM*,⁴⁵³ by adding the INMARSAT Mini-M to the list of approved earth stations.⁴⁵⁴ As thus revised, we believe the adopted rule represents a reasonable compromise between tightening the existing rule for safety reasons while according a fair measure of flexibility to small passenger vessel operators, especially small entities, in selecting an earth station that will be deemed suitable to obviate the need for an SSB radio.

In the *Second Report and Order*, we extend the current section 80.905 SSB reserve power supply requirement⁴⁵⁵ to the navigation receiver.⁴⁵⁶ No party has opposed this proposal or provided information that would permit a quantification of estimated compliance costs. The Coast Guard, the only commenter on this issue, urges adoption of the requirement because of the safety benefits. We agree with the Coast Guard. Since this rule merely extends an existing reserve power supply requirement to an additional piece of equipment, and there have been no comments in opposition to this proposal, we see no basis for exempting small entities from this requirement or providing an extended implementation period.

In the *Second Report and Order*, we adopt a new requirement specifying that vessels subject to section 80.905 must comply with the requirement in section 80.1085(c)⁴⁵⁷ for updating position information.⁴⁵⁸ In discussing the proposal for this rule in the *FNPRM*, the Commission observed that its adoption would impose a GMDSS requirement on small passenger vessels.⁴⁵⁹ The only party commenting on this matter was the Coast Guard, which reiterated its support for this requirement because it will enable the Coast Guard to locate mariners in a more timely manner and better utilize its limited resources.⁴⁶⁰ No party opposed this requirement, and the record is devoid of information as to the costs of compliance. Accordingly, we find no basis in the record to exempt some small passenger vessels from this requirement or to delay its implementation through a phased-in schedule.

⁴⁵¹ See 47 C.F.R. § 80.905(a)(3)(iii)(B), 4(iii)(B).

⁴⁵² See para. 38, *supra*.

⁴⁵³ See *GMDSS FNPRM*, 17 FCC Rcd at 6787, ¶ 124.

⁴⁵⁴ See para. 38, *supra*. In the *FNPRM*, we proposed to permit only INMARSAT A (existing units only), B, and C earth stations. See *GMDSS FNPRM*, 17 FCC Rcd at 6787, ¶ 124.

⁴⁵⁵ See 47 C.F.R. § 80.905(a)(3)(iv), (4)(iv).

⁴⁵⁶ See para. 39, *supra*.

⁴⁵⁷ 47 C.F.R. § 80.1085(c). Section 80.1085(c) states: "All GMDSS equipment capable of transmitting an automatic distress alert which includes position of the ship must have either an integral navigation receiver or capability of being connected to an external navigation receiver. If an external navigation receiver is installed, it shall be connected to all of the alerting devices referred to above. If there is no navigation receiver, the position must be entered manually for each alerting device at least once every 4 hours (at the change of the navigation watch)."

⁴⁵⁸ See para. 40, *supra*.

⁴⁵⁹ See *GMDSS FNPRM*, 17 FCC Rcd at 6787, ¶ 125.

⁴⁶⁰ See para. 40 & n.160, *supra* (citing USCG Comments (WT 00-48) at 7.

Finally, in the *Second Report and Order*, we amend section 80.1085 of the rules⁴⁶¹ to require that every passenger ship be provided with means for two-way on-scene radiocommunications for search and rescue purposes using the aeronautical frequencies 121.5 and 123.1 MHz from the position from which the ship is normally navigated.⁴⁶² PVA argues that a requirement for on-scene radios with aeronautical frequencies is expensive and is not useful outside of open ocean environments.⁴⁶³ It urges that this requirement not be imposed upon passenger vessels operating in or near coastal, inland, and other protected waters.⁴⁶⁴ More broadly, PVA complains that the USCG's proposals in this proceeding indicate that the USCG is seeking to extend equipment requirements that are justified for vessels in open-ocean service to vessels on domestic voyages.⁴⁶⁵ We agree with PVA that equipment requirements that make sense for vessels on the open ocean should not be extended without further analysis to vessels that stay closer to shore. However, we disagree with PVA that an on-scene capability for two-way radiocommunications with aircraft using the aeronautical frequencies 121.5 and 123.1 MHz offers no potential safety benefits to vessels on domestic voyages. We believe that the ability to communicate with helicopters or other aircraft involved in search and rescue operations could save lives where, for example, a passenger vessel catches fire and is exuding thick smoke on an inland waterway. We further believe that these safety benefits militate against exempting certain vessels from this requirement, based either on the operator's small business status or the restriction of the vessel to inland or protected waterways, or a combination of both factors. Additionally, we do not believe that adopting this requirement in the Part 80 rules imposes a new compliance cost on passenger vessels since the requirement was imposed internationally under SOLAS well before the release of this order. Moreover, because the safety benefits of this requirement are not dependent on GMDSS implementation, and because passenger vessels are already required to have this capability under SOLAS, we see no reason to defer the effective date of this requirement to one year after Sea Area A1 or Sea Area A2 implementation, as we have done with some of the other requirements adopted herein in the interest of reducing compliance costs.⁴⁶⁶ However, we believe it is appropriate to defer the effective date for this requirement for some shorter period in order to mitigate the compliance costs for small passenger vessel operators. Accordingly, we will make this requirement effective six months after the effective date of the *Second Report and Order*.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

None.

⁴⁶¹ 47 C.F.R. § 80.1085.

⁴⁶² See para. 46, *supra*.

⁴⁶³ PVA Comments at 2.

⁴⁶⁴ *Id.*

⁴⁶⁵ *Id.*

⁴⁶⁶ See para. 34, *supra*.

Report to Congress: The Commission will send a copy of the *Second Report and Order* in WT Docket No. 00-48, including the Final Regulatory Flexibility Analysis, in a report to be sent to Congress pursuant to the Congressional Review Act.⁴⁶⁷ In addition, the Commission will send a copy of the *Second Report and Order* in WTB Docket No. 00-48, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the SBA. A copy of the *Second Report and Order* in WT Docket No. 00-48 and the Final Regulatory Flexibility Analysis (or summaries thereof) will also be published in the Federal Register.⁴⁶⁸

⁴⁶⁷ See 5 U.S.C. § 801(a)(1)(A).

⁴⁶⁸ See *id.* § 604(b).

APPENDIX D

FINAL REGULATORY FLEXIBILITY ANALYSIS

(*Sixth Report and Order* in PR Docket No. 92-257)

As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁴⁶⁹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Fourth Further Notice of Proposed Rule Making* (4th FNPRM) in this proceeding.⁴⁷⁰ The Commission sought written public comment on the proposals in the 4th FNPRM, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.⁴⁷¹

A. Need for, and Objectives of, the Sixth Report and Order

103. The rules adopted in the *Sixth Report and Order* are intended to further streamline, consolidate and clarify the Commission's Part 80 rules governing VHF public coast (VPC) stations; remove unnecessary or duplicative requirements; address new international maritime requirements; and promote flexibility and efficiency in the use of marine radio equipment in a manner that will further maritime safety. Specifically, in the *Sixth Report and Order* the Commission (a) clarifies the responsibilities of VPC stations as to when they must maintain a watch on the Channel 16 distress frequency and as to their obligation to notify the Coast Guard of a station relocation;⁴⁷² (b) generally declines to impose additional technical requirements for VPC stations operating on offset channels;⁴⁷³ (c) denies a request that nine channel pairs now allocated for public safety and other private land mobile radio operations be reallocated for use by VPC stations;⁴⁷⁴ (d) adopts new rules to govern the implementation of Automatic Identification Systems;⁴⁷⁵ (e) establishes a new emission mask in Part 80 to accommodate a wide range of data services;⁴⁷⁶ (f) eliminates the station identification requirement for VPC stations licensed on a geographic area basis;⁴⁷⁷ (g) authorizes VPC stations to maintain required station records in electronic form;⁴⁷⁸ (h) relaxes the posting requirement for VPC stations;⁴⁷⁹ and (i) provides a clarification in the rules that VPC stations, like other providers of commercial mobile radio services, have been relieved of certain filing requirements as a matter of forbearance.⁴⁸⁰

⁴⁶⁹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁴⁷⁰ Amendment of the Commission's rules Concerning Maritime Communications, *Fourth Further Notice of Proposed Rule Making*, PR Docket No. 92-257, 17 FCC Rcd 227, 243 (2001).

⁴⁷¹ See 5 U.S.C. § 604.

⁴⁷² See paras. 55-57, *supra*.

⁴⁷³ See paras. 60-61, *supra*.

⁴⁷⁴ See para. 63, *supra*.

⁴⁷⁵ See paras. 66-67, *supra*.

⁴⁷⁶ See para. 69, *supra*.

⁴⁷⁷ See para. 72, *supra*.

⁴⁷⁸ See para. 75, *supra*.

⁴⁷⁹ See para. 76, *supra*.

⁴⁸⁰ See para. 78, *supra*.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

No comments were submitted specifically in response to the IRFA. Nonetheless, we have considered the potential economic impact on small entities of the rules discussed in the IRFA, and we have considered alternatives that would reduce the potential economic impact on small entities of the rules enacted herein.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.⁴⁸¹ The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁴⁸² In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁴⁸³ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁴⁸⁴

Small businesses in the aviation and marine radio services use a marine very high frequency (VHF), medium frequency (MF), or high frequency (HF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, an aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. For purposes of this FRFA, therefore, the applicable definition of small entity is the definition under the SBA rules applicable to wireless telecommunications. Pursuant to this definition, a "small entity" for purposes of the ship station licensees, public coast station licensees, or other marine radio users that may be affected by these rules, is any entity employing 1,500 or fewer persons. 13 C.F.R. § 121.201 (NAICS Code 517212). Since the size data provided by the Small Business Administration do not enable us to make a meaningful estimate of the number of marine radio service providers and users that are small businesses, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that twelve radiotelephone firms out of a total of 1,178 such firms which operated in 1992 had at least 1,000 employees. Thus, we estimate that as many as 1,166 small entities may be affected.

Some of the rules adopted herein affect VHF public coast station licensees. The Commission has defined the term "small entity" specifically applicable to public coast station licensees as any entity employing less than 1,500 persons, based on the definition under the Small Business Administration rules applicable to radiotelephone service providers. See Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853, 19893 (1998) (citing 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812, now NAICS Code 517212). Since the size data provided by the Small Business Administration do not enable us to make a meaningful estimate of the number of public coast station licensees that are small businesses, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that twelve

⁴⁸¹ 5 U.S.C. § 604(a)(3).

⁴⁸² *Id.* § 601(6).

⁴⁸³ *Id.* § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

⁴⁸⁴ Small Business Act, 15 U.S.C. § 632 (1996).

radiotelephone firms out of a total of 1,178 such firms which operated in 1992 had 1,000 or more employees. Thus, we estimate that no fewer than 1,166 small entities will be affected.

Some of the rules adopted herein may also affect small businesses that manufacture marine radio equipment. The Commission has not developed a definition of small entities applicable to marine radio equipment manufacturers. Therefore, the applicable definition is that for Wireless Communications Equipment Manufacturers. The SBA has established a small business size standard for radio and television broadcasting and wireless communications equipment manufacturing. Under this standard, firms are considered small if they have 750 or fewer employees.⁴⁸⁵ Census Bureau data for 1997 indicate that, for that year, there were a total of 1,215 establishments⁴⁸⁶ in this category.⁴⁸⁷ Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of wireless equipment manufacturers in this category is approximately 61.35%,⁴⁸⁸ so the Commission estimates that the number of wireless equipment manufacturers with employment under 500 was actually closer to 706, with an additional 23 establishments having employment of between 500 and 999. Given the above, the Commission estimates that the great majority of wireless communications equipment manufacturers are small businesses.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

The *Sixth Report and Order* does not impose any additional reporting, recordkeeping, or other compliance requirements on small entities. The rule amendments adopted in the *Sixth Report and Order* generally relieve VPC station licensees of existing requirements or relax those requirements.⁴⁸⁹ The *Sixth Report and Order* does amend section 80.302(a) of the Commission's rules⁴⁹⁰ to expressly mandate that VPC licensees subject to a Channel 16 watch requirement must notify the Coast Guard as soon as practicable of a relocation of the station.⁴⁹¹ This requirement was not opposed by any party. In fact, the only parties commenting on the issue – the Coast Guard and a VPC licensee – urged the Commission to adopt this rule change. Accordingly, we do not believe this requirement will have a direct and significant economic impact on any small entities or, for that matter, any entities at all. In any event, and as we state in the *Sixth Report and Order*,⁴⁹² this is not a *new* or *additional* requirement. Prior to the amendment adopted herein, section 80.302(a) specified that a VPC licensee subject to the watch requirement must notify the Coast Guard as soon as practicable when there is any change in the operation of the station that

⁴⁸⁵ 13 CFR § 121.201, NAICS code 334220.

⁴⁸⁶ The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 1997, which was 1,089.

⁴⁸⁷ U.S. Census Bureau, 1997 Economic Census, Industry Series: Manufacturing, "Industry Statistics by Employment Size," Table 4, NAICS code 334220 (issued August 1999).

⁴⁸⁸ *Id.* Table 5, "Industry Statistics by Industry and Primary Product Class Specialization: 1997."

⁴⁸⁹ See, e.g., para. 69 (establishing an emission mask that will permit VPC licensees to offer a full range of data services); para. 72 (relieving geographical area VPC licensees of station identification requirements); para. 75 (permitting VPC licensees to maintain required records in electronic form if they so choose); para. 76 (relaxing the posting requirement for VPC stations); and para. 78 (amending the rules to clarify that VPC licensees are no longer subject to certain filing requirements because the Commission has determined to forbear from enforcing those requirements against commercial mobile radio service providers), *supra*.

⁴⁹⁰ 47 C.F.R. § 80.302(a).

⁴⁹¹ See para. 56, *supra*.

⁴⁹² *Id.*

would result in a “discontinuance, reduction or suspension” of the watch.⁴⁹³ We believe this language already encompassed a requirement to notify the Coast Guard of a relocation of the watch, and we have amended the rule only to clarify the point, as requested by the commenters.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”⁴⁹⁴

As explained in Section D of this FRFA, *supra*, the *Sixth Report and Order* does not impose any additional reporting, recordkeeping, or other compliance requirements on small entities. The rule amendments adopted in the *Sixth Report and Order* generally relieve VPC station licensees of existing requirements or relax those requirements.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

None.

Report to Congress: The Commission will send a copy of the *Sixth Report and Order* in PR Docket No. 92-257, including the Final Regulatory Flexibility Analysis, in a report to be sent to Congress pursuant to the Congressional Review Act.⁴⁹⁵ In addition, the Commission will send a copy of the *Sixth Report and Order* in PR Docket No. 92-257, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the SBA. A copy of the *Sixth Report and Order* in PR Docket No. 92-257 and the Final Regulatory Flexibility Analysis (or summaries thereof) will also be published in the Federal Register.⁴⁹⁶

⁴⁹³ 47 C.F.R. § 80.302(a).

⁴⁹⁴ 5 U.S.C. § 603(c)(1)-(4).

⁴⁹⁵ See *id.* § 801(a)(1)(A).

⁴⁹⁶ See *id.* § 604(b).

APPENDIX E

INITIAL REGULATORY FLEXIBILITY ANALYSIS

(*Second Further Notice of Proposed Rule Making* in WT Docket No. 00-48)

As required by the Regulatory Flexibility Act (RFA),⁴⁹⁷ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *Second Further Notice of Proposed Rule Making* in WT Docket No. 00-48 (2nd FNPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the 2nd FNPRM as provided in paragraph 91 of the item. The Commission will send a copy of the 2nd FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.⁴⁹⁸ In addition, the 2nd FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.⁴⁹⁹

A. Need for, and Objectives of, the Proposed Rules

In the 2nd FNPRM, we seek comment on rule amendments that are intended to enhance maritime safety, promote the efficient use of the maritime radio spectrum, and, to the extent consistent with these first two objectives, remove unnecessary regulatory burdens. We also seek to conform the Commission's Part 80 rules with international standards where doing so will not undermine domestic regulatory objectives. In the 2nd FNPRM, we first request comment on whether we should adopt new requirements for digital selective calling equipment that conform to recently adopted international standards for such equipment.⁵⁰⁰ Second, we invite comment on whether to augment the list of ship earth stations approved for use in lieu of a single sideband radio. Specifically, we invite comment on whether to add the INMARSAT F-77 ship earth station to the list.⁵⁰¹ Next, we seek comment on a recommendation by the National Transportation Safety Board to require that all small passenger vessels have a reserve power source.⁵⁰² In addition, we ask interested parties to consider whether we should make certain commercial radio operator licenses and permits valid for the lifetime of the holder, obviating the need for such licensees to file periodic renewal applications.⁵⁰³ We also ask for comment on whether we should introduce greater flexibility into the examination process by removing rule provisions that codify the number of questions for each examination element and that require the exclusive use of new question pools immediately upon their public availability.⁵⁰⁴ In addition, we request comment to assist us in crafting rules to guide the industry in making communications equipment that will meet the functional needs of the Ship Security Alert System.⁵⁰⁵ We also invite recommendations for further updating of Part 80 of our rules in response to recent changes in international standards, and specifically request comment on whether certain on-board frequencies should be authorized for narrowband use domestically, as they

⁴⁹⁷ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601 *et. seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

⁴⁹⁸ *Id.* § 603(a).

⁴⁹⁹ *See id.*

⁵⁰⁰ *See* para. 79, *supra*.

⁵⁰¹ *See* para. 80, *supra*.

⁵⁰² *See* paras. 81-82, *supra*.

⁵⁰³ *See* para. 83, *supra*.

⁵⁰⁴ *See* para. 84, *supra*.

⁵⁰⁵ *See* para. 85, *supra*.

are internationally.⁵⁰⁶ Finally, we request comment on suggestions by both Globe Wireless and the Commission that certain regulatory provisions have become outdated, and therefore should be revised or eliminated.⁵⁰⁷

B. Legal Basis for Proposed Rules

The proposed action is authorized under sections 1, 4(i), 302, 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, 303(f) and (r), and 332.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁵⁰⁸ The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵⁰⁹ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁵¹⁰ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁵¹¹ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."⁵¹² Nationwide, as of 1992, there were approximately 275,801 small organizations.⁵¹³ "Small governmental jurisdiction"⁵¹⁴ generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."⁵¹⁵ As of 1992, there were approximately 85,006 governmental entities in the United States.⁵¹⁶ This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000.⁵¹⁷ The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by adoption of rules discussed in the 2nd FNPRM.

⁵⁰⁶ See para. 86, *supra*.

⁵⁰⁷ See paras. 87-88, *supra*.

⁵⁰⁸ 5 U.S.C. § 603(b)(3).

⁵⁰⁹ 5 U.S.C. § 601(6).

⁵¹⁰ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

⁵¹¹ Small Business Act, 15 U.S.C. § 632 (1996).

⁵¹² 5 U.S.C. § 601(4).

⁵¹³ 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

⁵¹⁴ 47 C.F.R. § 1.1162.

⁵¹⁵ 5 U.S.C. § 601(5).

⁵¹⁶ U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

⁵¹⁷ *Id.*

Small businesses in the aviation and marine radio services use a marine very high frequency (VHF), medium frequency (MF), or high frequency (HF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, an aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. For purposes of this IRFA, therefore, the applicable definition of small entity is the definition under the SBA rules applicable to wireless telecommunications. Pursuant to this definition, a "small entity" for purposes of the ship station licensees, public coast station licensees, or other marine radio users that may be affected by these rules, is any entity employing 1,500 or fewer persons. 13 C.F.R. § 121.201 (NAICS Code 517212). Since the size data provided by the Small Business Administration do not enable us to make a meaningful estimate of the number of marine radio service providers and users that are small businesses, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that twelve radiotelephone firms out of a total of 1,178 such firms which operated in 1992 had at least 1,000 employees. Thus, we estimate that as many as 1,166 small entities may be affected. We invite comment on whether this is the correct definition to use in this context. We note in this regard that one of the discussed rule changes would affect small passenger vessels, and the Passenger Vessel Association has stated in comments in this proceeding that the vast majority of U.S. passenger vessel operating companies are small businesses.⁵¹⁸ We accordingly request commenters to consider whether the number of small passenger vessel operators potentially affected by the rule is not fully reflected in the above definition and estimate. In keeping with the spirit of the RFA, we choose to err, if at all, on the side of overestimating the number of small entities potentially affected by these rules.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

We believe two of the possible rule changes discussed in the 2nd *FNPRM* may potentially have a direct, significant economic impact on a substantial number of small entities.⁵¹⁹ As noted, we have requested comment on whether to impose new requirements on digital selective calling equipment in conformity with recently adopted international standards for such equipment.⁵²⁰ We invite interested parties to address the economic impact of the new requirements on small vessel operators and other small businesses that may be subject to the requirements. It is our tentative conclusion that mandating compliance with the new requirements will benefit maritime safety. We seek information on whether the compliance costs may outweigh the safety benefits of these requirements, and whether there are alternative means of securing the safety benefits of these requirements through means that are less burdensome to regulatees.

In addition, we have requested comment on a NTSB recommendation that the Commission amend its rules to require that small passenger vessels have VHF radiotelephone communications systems

⁵¹⁸ See note 137, *supra* (citing PVA Comments at 1).

⁵¹⁹ We believe the discussed rules concerning commercial radio operator licensing examinations would not impose any new reporting, recordkeeping, or other compliance requirement on any regulated entity. An extension of the license terms of certain radio operator licenses, to the lifetime of the license holder, would benefit those licensees by eliminating the cost and paperwork burden of filing periodic license renewal applications. The other specific rule changes under consideration would simply provide a transition period before use of a new question pool became mandatory, and make it easier to change the number of questions that have to be included on a particular examination. We do not anticipate that either of these rule changes would have a significant or direct economic impact on any entity, and that whatever slight impact they do have would be economically beneficial. Finally, our request for interested parties to suggest whether certain rules should be updated to reflect changes in international standards is so open-ended that the impact of any responsive proposals cannot be predicted at this stage. We recognize, of course, that we may need to augment our regulatory flexibility analysis with respect to specific proposals that we receive from commenters.

⁵²⁰ See para. 79, *supra*.

on board that can operate even when the vessel loses power.⁵²¹ Currently, section 80.917 of the Commission's rules imposes a requirement on vessels of more than 100 gross tons to have a reserve power supply.⁵²² Adoption of the NTSB recommendation would in effect remove the tonnage limitation from section 80.917, and impose the reserve power supply requirement on all passenger vessels, regardless of size. The NTSB states that imposing the reserve power supply requirement on all small passenger vessels will prevent accidents and save lives.⁵²³ Imposition of such a requirement would likely require small passenger vessel operators, including small passenger vessel operators that are small entities, to purchase and install additional equipment on their vessels. The record in this proceeding does not indicate the estimated cost of such equipment or the estimated overall costs of compliance with such a requirement. In the 2nd FNPRM, we specifically ask commenters to provide information on the costs to small vessel operators of complying with such a requirement,⁵²⁴ and we reiterate that request here.

We do not believe any of the other matters discussed in the 2nd FNPRM would have a direct, significant economic impact on a substantial number of small entities. However, any commenters that disagree with that tentative conclusion are asked to explain the basis of that disagreement.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁵²⁵

In the 2nd FNPRM, we request comment on whether to incorporate into the Commission's rules newly adopted international standards for digital selective calling equipment. We describe here, and seek comment on, possible alternatives to imposing these new requirements that might minimize the economic impact on small entities. First, we ask commenters to consider whether it would be appropriate to exempt small businesses from any additional requirements for digital selective calling equipment that may be adopted. Commenters advocating such an exemption should propose criteria for identifying entities that should be exempt, and should explain why they believe such an exemption represents a reasonable compromise between the goals of promoting maritime safety and minimizing compliance costs for small entities. In addition, if we do determine to impose new requirements on digital selective calling equipment, we would consider whether we should grandfather some vessels from the requirement, either indefinitely or for a specified term of years, or whether there should be a phased-in schedule for compliance, with possibly different compliance timetables for vessels based, possibly, on vessel size or on whether the vessel operator is a small business. Interested parties should address these alternatives. Finally, we seek comment on whether an alternative equipment requirement, less costly to small passenger vessel operators, could provide the same or similar safety benefits as the international standards. Proponents of such an alternative requirement should compare the estimated costs of complying with the international digital selective calling equipment standards with the estimated costs of complying with the proposed alternative, and explain why they believe the proposed alternative will be

⁵²¹ See paras. 81-82, *supra*.

⁵²² 47 C.F.R. § 80.917.

⁵²³ See para. 81 & note 353, *supra*.

⁵²⁴ See para. 82, *supra*.

⁵²⁵ See 5 U.S.C. § 603(c).

adequate to address safety concerns. Commenters are also invited to suggest alternatives other than those discussed here.

In the 2nd FNPRM, we also invite comment on an NTSB recommendation to require that small passenger vessels, regardless of size, have VHF radiotelephone communications systems on board that can operate even when the vessel loses power. We tentatively conclude that the most direct way of imposing such a requirement is removing the tonnage limitation in section 80.917, which now exempts vessels of 100 gross tons or less from an otherwise applicable reserve power supply requirement. However, we also specifically ask interested parties to recommend other means of addressing the safety needs of small vessel operators, crewmembers, and passengers, either as alternatives to the NTSB recommendation or as supplementary measures.⁵²⁶

We describe here, and seek comment on, possible alternatives to the NTSB recommendation that might minimize the economic impact on small entities. First, we ask commenters to consider whether the reserve power supply requirement should be expanded only to a subset of additional small passenger vessels rather than to all small passenger vessels. For example, instead of eliminating the tonnage limitation in current section 80.917, we might simply lower the threshold. Commenters advocating a lowered tonnage threshold should recommend a specific threshold and explain why they believe it represents a reasonable compromise between the goals of promoting maritime safety and minimizing compliance costs for small entities. Alternatively, we could restrict the applicability of the reserve power supply requirement based on the size of the small passenger vessel operator, perhaps exempting only those small passenger vessel operators that meet the statutory definition of a small business. Commenters advocating such an approach should explain, *inter alia*, if it might result in exempting certain vessels exceeding 100 gross tons that are now fully subject to the reserve power supply requirement, and the ramifications of such an exemption for maritime safety. In addition, we might consider providing a continuing exemption for vessels below a certain size, or owned by a small business, that operate only in protected inland waterways.⁵²⁷ If we do determine to impose a reserve power supply requirement on all small passenger vessels, we would consider whether we should grandfather some vessels from the requirement, either indefinitely or for a specified term of years, or whether there should be a phased-in schedule for compliance, with possibly different compliance timetables for vessels based, possibly, on vessel size or on whether the vessel operator is a small business. Interested parties should address these alternatives. Finally, we seek comment on whether an alternative equipment requirement, less costly to small passenger vessel operators, could provide the same or similar safety benefits as a reserve power supply requirement. Proponents of such an alternative requirement should compare the estimated compliance costs of the reserve power supply requirement with the estimated compliance costs of the proposed alternative, and explain why they believe the proposed alternative will be adequate to address safety concerns.⁵²⁸ Commenters are also invited to suggest alternatives other than those discussed here.

⁵²⁶ See para. 82, *supra*.

⁵²⁷ However, we observe that the particular incident that prompted the NTSB recommendation was a fire on board a small passenger vessel on a commuter run in the Hudson River. See para. 81, *supra*.

⁵²⁸ We note that Section 80.917 not only requires a reserve power supply but also specifies certain criteria relating to, for example, location and accessibility, overload protection, charging of storage batteries, and engine cooling.
(continued....)

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

(...continued from previous page)

See 47 C.F.R. § 80.917(b)-(g). Commenters may propose, as alternatives minimizing the costs to small entities, either a requirement for less costly equipment in lieu of a reserve power supply, or a relaxation of the criteria applicable to the reserve power supply.

APPENDIX F**Glossary of Acronyms**

AIS	Automatic Identification Systems
ATMS	Automated Maritime Telecommunications System
CMRS	Commercial mobile radio services
COLEM	Commercial Operator License Examination Manager
DSC	Digital selective calling
EPIRB	Emergency position indicating radiobeacon
GMDSS	Global Maritime Distress and Safety System
IEC	International Electrotechnical Commission
IMO	International Maritime Organization
ISO	International Standards Organization
ITU	International Telecommunication Union
NTSB	National Transportation Safety Board
PAWSS	Ports and Waterways Safety System
PSTN	Public switched telephone network
RTCM	Radio Technical Commission for Maritime Services
SOLAS	International Convention for the Safety of Life at Sea
SSB	Single sideband
STCW	Standards of Training, Certification and Watchkeeping Convention
ULS	Universal Licensing System
USCG	United States Coast Guard
USPS	United States Power Squadrons
VPC	VHF public coast station
VTS	Vessel Traffic Systems